IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.1108 OF 2003
IN
SUMMARY SUIT NO.2718 OF 2003

Asia Today Ltd. .. Plaintiffs

Vs.

Rajpal and Anr. ..Defendants

Mr.Pesi Modi i/b Mustafa Motiwala for the plaitniffs

Mr.P.L.Bhujbal for defendant no.2

CORAM : S.U.KAMDAR, J
DATED : 14TH SEPTEMBER, 2005

P.C.:

1. In so far as defendant no.1 is concerned, there is no written contract between the parties. However, the learned counsel for the plaintiffs states that general terms and conditions at Ex.A to the plaint read with the Agency Release Order dt.25.9.00 at Ex.B to the plaint which is at page 25 is a written contract with the defendant no.1. Admittedly, the said Agency Released Order is only signed by defendant no.2 and hence, defendant no.1 is not liable to make payment. There is no written contract between defendant no.1 and plaintiff. In

that view of the matter, unconditional leave to defend as against defendant no.1. Summons for Judgment dismissed as against defendant no.1.

2. In so far as defendant no.2 is concerned,there is a clear cut agreement by and between the defendant no.2 and plaintiff herein which is reflected by Ex.A and B coupled with invoices issued to defendant no.2 by the plaintiff herein. The learned counsel for the defendant no.2 contends that he is merely an agent of the defendant no.1 and as such he is not liable to make payment.

3. Having placed the order with the plaintiff the defendant no.2 cannot escape the liability thereunder. In view of the aforesaid, I direct the defendant no.2 to deposit a sum of Rs.2,50,000/- within 4 weeks failing which plaintiff will be entitled to decree as against defendant no.2. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time

to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.